IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 153 of 1982

The Municipal Corporatin of Gr.Bombay.. Plaintiff

versus

Indian Metal & ferro Alloys Ltd.& ors.. Defendants

...

Mr.J.N. Saluja i/b M.v. Kini & Co. for the plaintiff.

None for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 9th February 2007.

P.C.:

1. Mr.Saluja i/b M.V. Kini & Co. appears for the plaintiff without vakalatnama. None present for the defendant.

2. Previously, the plaintiff was directed to adduce the evidence by way of examination in chief of its witness on affidavit. By order dated 3rd October 2003, time to file affidavit was extended at the request of the plaintiff by way of a last chance

subject to payment of costs of Rs.3,000/-. Despite the order passed as far back as 3rd October 2003, the plaintiff has neither filed the documents nor filed affidavit of its witnesses. Today Mr.Saluja appears and prays for time to file vakalatnama. On being called upon to tender the affidavit of evidence, the counsel state that the affidavit is not ready. Counsel is also unwilling to examine any witness on behalf of the plaintiff on the ground that he has no instructions and that he has no proof. Thus the plaintiff has not effectively represented before the court and is not willing to adduce evidence.

3. In the circumstances, I am constrained to dismiss the suit under Order 9 Rule 2 read with Order 17 Rule 2 of the Code of Civil Procedure. Suit is accordingly dismissed.

D.G. KARNIK, J